
OLR Bill Analysis

HB 5287

AN ACT CONCERNING THE APPOINTMENT OF A GUARDIAN AD LITEM FOR A PERSON WHO IS SUBJECT TO A CONSERVATORSHIP PROCEEDING OR A PROCEEDING CONCERNING ADMINISTRATION OF TREATMENT FOR A PSYCHIATRIC DISABILITY.

SUMMARY

This bill limits the circumstances under which judges or family support magistrates can appoint a guardian ad litem (GAL – a person assigned to make findings and recommendations about a litigant when a court is concerned that this person is incapable of making his or her own decisions). Currently, court GAL appointments and functions are purely discretionary and vary considerably from court to court.

The bill applies when:

1. the court is being asked to order that an individual be given psychiatric medication or hospital treatment against his or her will;
2. a litigant, by request, has a court-approved conservator to handle his or her daily or financial affairs, or both; or
3. a mentally ill person has filed a habeas corpus writ, claiming that he or she is being held or medicated unlawfully. (In this case, the bill prohibits GAL appointments.)

EFFECTIVE DATE: October 12, 2012

FORCED MEDICATION AND HOSPITALIZATION

Under the bill, judges or family support magistrates faced with the decision of ordering forcible medication or hospitalization can appoint a GAL only if they first get a probate court's determination that the ill person cannot care for himself or herself or manage his or her affairs.

By law, a person is incapable of doing this if he or she has a mental, emotional, or physical condition that results in an inability to receive and evaluate information or make or communicate decisions to such an extent that the person is unable, even with appropriate assistance, to meet essential requirements for personal needs.

WHEN LITIGANT HAS COURT-APPROVED CONSERVATOR

The bill further limits a GAL's role when the incompetent person already has a court-approved conservator. The functions of these two officials substantially overlap in that conservators also recommend court action based on their ward's best interests.

Limited Purpose and Duration of Appointment

Rather than giving the court broad discretion to set the scope of the GAL's authority, the bill requires it to make a specific finding that a GAL is needed (1) for a specific purpose or to answer specific questions to help the court in making a determination or (2) because the conserved person's attorney is unable to ascertain his or her client's preferences, including preferences expressed in the past. Before appointing a GAL, the court may question the conserved person to determine his or her preferences or inability to express those preferences.

The bill requires the appointing judge or magistrate's GAL appointment order to:

1. limit the GAL's appointment scope and duration and
2. direct the GAL to take only the specific action required or to answer specific questions the court poses.

The questions the GAL may ask include those intended to ascertain whether the attorney or conservator's proposed course of action is the least restrictive means of intervention available to the person in managing his or her affairs or caring for himself or herself.

Any GAL appointment must end when the GAL submits his or her court report. As under existing law, the court may order it to end

sooner. The court must pay the GAL's reasonable fees as part of the expenses of administration.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 42 Nay 0 (03/21/2012)